

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Chief Bankruptcy Judge
Sacramento, California

April 2, 2002 at 9:00 a.m.

THE RULINGS ARE DIVIDED IN TWO PARTS. TENTATIVE RULINGS COME FIRST (ITEMS 1-31) AND THE FINAL RULINGS (ITEMS 32-131) FOLLOW. WITHIN EACH PART, CASES ARE ARRANGED BY THE LAST TWO DIGITS IN THEIR CASE NUMBERS.

"FINAL RULING" MEANS THAT THE MATTER WILL BE RESOLVED WITHOUT ORAL ARGUMENT. IF ALL PARTIES HAVE AGREED TO CONTINUE A MATTER OR TO RESOLVE IT BY STIPULATION, THEY MAY SO ADVISE THE COURTROOM DEPUTY CLERK AND THE FINAL RULING WILL BE VACATED IN FAVOR OF THE CONTINUANCE OR THE STIPULATION. IF YOU CANNOT ADVISE THE COURTROOM DEPUTY CLERK AT THE HEARING, MAKE PROVISION FOR VACATING THE FINAL RULING IN YOUR ORDER.

BECAUSE THE CALENDAR IS LENGTHY, THE COURT HAS DIVIDED THE TENTATIVE RULINGS INTO TWO GROUPS. THE HEARINGS ON THE FIRST GROUP OF MATTERS WITH TENTATIVE RULINGS (ITEMS 1-20) WILL BEGIN AT APPROXIMATELY 9:00 A.M. THE SECOND GROUP (ITEMS 21-31) WILL BE CALLED BEGINNING AT APPROXIMATELY 10:00 A.M. THESE TIMES ARE APPROXIMATE. HOWEVER, EACH GROUP WILL BE CALLED NO EARLIER THAN THE INDICATED TIME.

THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER.

Matters called beginning at 9:00 a.m.

1. 01-29001-A-13L MARK/SHERRI LAMANUZZI HEARING - MOTION FOR
AEL #1 RELIEF FROM AUTOMATIC STAY
CENDANT MORTGAGE, INC., VS. 3-8-02 [10]
PART II

Tentative Ruling: Because the motion does not comply with the requirements of LBR 4001-1, Part II, the motion is deemed brought under LBR 4001-1, Part III. The movant has waived the time limitations of section 362(e). If the debtor, the trustee, or any party in interest appears to oppose the motion, the court will assign a briefing schedule and a final hearing date and time. If there is no opposition, the court will consider the merits of the motion.

2. 99-21204-A-13L EDWIN/MARINA RAMAZZINI HEARING - MOTION
SDB #1 TO MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
2-28-02 [28]

Tentative Ruling: The motion to modify the confirmed plan is denied and the objection is sustained. The plan does not provide for payment in full of the priority claims of the IRS and the FTB as required by 11 U.S.C. § 1322(a)(2). While the proofs of claims filed by these taxing authorities will determine how much they are paid, the plan cannot be completed within its stated term if this is done. Thus, either the claims will not be paid as required by section 1322(a)(2) or the plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

April 2, 2002, at 9:00 a.m.

3. 02-23005-A-13L GEORGE MCINTYRE
EE #1
HORAN INVESTMENT COMPANY, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-21-02 [7] O.S.T.
PART II

Tentative Ruling: The motion is granted pursuant to 11 U.S.C. § 362(d)(1). After obtaining relief from the automatic stay in a prior chapter 13 petition (Case No. 01-32518) filed by the debtor, the movant's predecessor conducted a nonjudicial foreclosure sale on February 4, 2002. The movant was the successful bidder at the sale. Its trustee's deed was issued on February 11, 2002 and recorded in the official records of Sacramento County on February 14, 2002. Because the trustee's deed was recorded within 15 days of the foreclosure sale, it relates back to 8:00 a.m. of the day the sale was actually conducted. Cal. Civil Code § 2924h(c).

After giving notice to the debtor to vacate the premises, the debtor continued to occupy the premises. The movant then filed an unlawful detainer proceeding in state court and served it on the debtor. The debtor filed an answer and the trial was held on March 8, 2002. Judgment was issued that day in favor of the movant and it obtained a writ of execution on March 11, 2002. The filing of this second chapter 13 petition on March 18, 2002 prevented the movant from enforcing its writ of possession.

Under California law, once a nonjudicial foreclosure sale has occurred, the trustor has no right of redemption. Moeller v. Lien, 25 Cal. App.4th 822, 831 (1994). In this case, therefore, the debtor has no right to ignore the foreclosure. If the foreclosure sale was not in accord with state law as intimated by the debtor, this could have been asserted as a defense to an unlawful detainer proceeding in state court. The purchaser's right to possession after a foreclosure sale is based on the fact that the property has been "duly sold" by foreclosure proceedings. Cal. Civ. Pro. Code § 1161a. Therefore, it is necessary that the plaintiff prove that each of the statutory procedures has been complied with as a condition for seeking possession of the property. See Miller & Starr, California Real Estate 2d, §§ 18.140 and 18.144 (1989).

Here, the debtor has no apparent right to reorganize the movant's predecessor's debt because of the foreclosure. Whether or not it was improper could have been decided in state court. Given that there is no debt to reorganize and now that a state court has determined that the movant is entitled to possession, the debtor has no interest in the subject property that can or should be protected by the automatic stay.

No fees and costs are awarded. The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived.

4. 02-20709-A-13L STEVEN W. MAHRT

HEARING - OBJECTION
TO CONFIRMATION OF PLAN BY
FRESNO COUNTY DISTRICT ATTORNEY
2-27-02 [12]

Tentative Ruling: No telephonic appearance is permitted to counsel for the party placing this matter on calendar because it did not include a motion control number as required by the local rules.

The objection is sustained. The debtor has failed to pay post-petition child support as required by a valid state court order. While the debtor disputes paternity, he has nonetheless been ordered to pay support. The court will not

The debtor's proposed plan states: "*Debtor shall maintain ongoing child or spousal support payments directly to the court-ordered recipient.*" His failure to do so is a breach of the plan. If he is unable to make the support payment, then the plan is not feasible. If he is unwilling to do so, the court concludes the debtor is proceeding in bad faith. He is using this case to collaterally attack a valid state court order.

Tentative Ruling: The movant leased or rented residential real property to the debtor. Prior to the filing of the petition, the movant successfully prosecuted an unlawful detainer action in state court and was awarded possession of the subject property. It has been issued a writ of possession.

Additionally, this petition was filed on March 4, 2002. A plan, schedules, and the statement of financial affairs should have been filed on March 19, 2002. Fed.R.Bankr.P. 1017(c) & 3015(b). The documents have not been filed. This fact, plus the filing of the petition to prevent the enforcement of the writ of possession, suggests that the petition was interposed solely for the purpose of delaying the movant rather than in an effort to reorganize the debtor's personal finances.

6. 00-27319-A-13L HEATHER/RONALD HAYES HEARING - MOTION FOR
VC #4 RELIEF FROM AUTOMATIC STAY ETC
CHASE MANHATTAN AUTOMOTIVE FIN., VS. 3-4-02 [67]
PART II

The plan fails to assume or reject the vehicle lease with the movant. Instead, the plan attempts to treat the lease as a secured claim and to modify the terms of the contract by providing for the "stripped down" claim. Because the vehicle is leased to the debtor, this is not possible. The debtor's choices are to assume or reject the lease as it is written. If the debtor wishes to assume the lease, the lease must be performed by making direct payments to the

movant. The lease arrearage can be cured through the plan.

The fact that a plan has been confirmed that provides for the movant's lease as if it were a secured claim does not make it a secured claim. The plan provides: "*The proof of claim filed by or on behalf of a creditor, not the plan or the schedules, will determine the amount and character of the creditor's claim.*" The movant has not filed a proof of claim and the debtor did not file one for the creditor. Thus, a proof of claim has not been filed establishing that the movant has a secured claim.

Even if the court assumed that the movant had a secured claim, it would terminate the stay. Since the movant filed no claim, since the debtor did not file one for it pursuant to 11 U.S.C. § 501(c), and since the bar date for claims has long expired, the claim cannot be paid. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c) untimely claims cannot be paid. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990). The plan also requires that a claim be filed, even by secured creditors, if a claim is to be paid through the plan. The plan provides: "*To be paid, creditors, including secured creditors, must file proofs of claim.*"

In Southtrust Bank of Alabama v. Thomas (In re Thomas), 883 F.2d 991 (11th Cir. 1989), cert. denied, 497 U.S. 1007 (1990), the Eleventh Circuit concluded that a secured claim holder need not file a proof claim and may instead simply ride through the Chapter 13 case with its lien unaffected. But because not filing a proof of claim means the creditor would receive no plan distributions, it could move for relief from the automatic stay for permission to repossess its collateral. This is despite the fact that the chapter 13 plan preserved its lien and proposed payment in full. If the debtor wished to avoid this result, he or she should have filed a proof of claim on behalf of the creditor. Accord In re Howard, 972 F.2d 639 (5th Cir. 1992); In re Linkous, 990 F.2d 160 (4th Cir. 1993).

Thus, if the claim is a secured claim, the stay may be terminated because it will not be paid through the case. If it is a lease, the debtor has failed to assume it and has failed to make any direct lease payments to the movant since the case was filed. The failure to do so is cause to terminate the stay. See also 11 U.S.C. § 365(d)(3). Either way, there is cause to terminate the stay.

The court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral/leased vehicle is being used by the debtor without compensation and is depreciating in value.

7.	02-20325-A-13L MPD #1	ROBERT/KLARIN FAUSETT	HEARING - MOTION TO DISMISS AND REQUEST FOR DISMISSAL AND OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN BY OCWEN FEDERAL BANK 3-11-02 [17]
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Tentative Ruling: The motion to dismiss the case is granted in part and the objection is sustained. The plan assumes a pre-petition arrearage of \$10,500.00 but the creditor is claiming over \$60,000.00. The discrepancy is so significant that the debtor would be unable to confirm a 60-month plan and repay the entire arrearage claimed by the creditor. While the debtor disputes the arrearage claimed, the debtor admits that the arrearage may be in "the tens

of thousands." The debtor also has offered no persuasive evidence that the arrearage is substantially less than claimed. Therefore, the court concludes that either the plan as proposed does not comply with 11 U.S.C. § 1325(a)(5)(B) or it is not feasible because the debtor cannot pay the arrearage as claimed.

The debtor has 15 days to file an amended or modified plan and a motion to confirm it and an objection to the claim of the creditor. Once filed, the debtor has 45 days to obtain confirmation of a plan that is both feasible and complies with section 1325(a)(5)(B). If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

8. 01-30226-A-13L JOHN E. LAFFITTE HEARING - OBJECTION
NLE #1 TO CONFIRMATION OF PLAN
BY TRUSTEE
3-8-02 [29]

Tentative Ruling: The objection is sustained. First, the plan fails to specify a plan payment and the length of the plan. Without this information, the court cannot determine whether the plan is feasible and will produce sufficient cash flow to satisfy 11 U.S.C. §§ 1322(a)(2), 1325(a)(4) & (5)(B), 1325(b). Second, the debtor has no disposable income with which to fund a plan. The net income on Schedule I is \$1,600.00 and the expenses on Schedule J are \$1,985.00.

9. 01-25138-A-13L NANCY A. SUTTER HEARING - MOTION
RD #1 TO MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
3-13-02 [16]

Tentative Ruling: The motion to modify the confirmed plan is denied and the objection is sustained. The debtor is suffering from a medical condition that prevents her from working. While some minimal financial information accompanies the motion, she has not filed amended Schedules I and J. Without this detailed information, the court cannot conclude that the modified plan is feasible. That is, the court has insufficient evidence to gauge whether the debtor has the ability to support herself and make a plan payment. The plan is not feasible. 11 U.S.C. § 1325(a)(6).

10. 96-26648-A-13L MICHAEL/FAITH WRIGHT CONT. HEARING - DEBTORS'
SDB #5 OBJECTION TO CLAIM NO. 1006
OF INTERNAL REVENUE SERVICE
12-18-01 [78]

Tentative Ruling: The objection is overruled. The debtor maintains that the priority claim of the IRS should be reduced from \$48,392.23 because the IRS has failed to credit pre-petition payments, because the priority claim includes interest on dischargeable taxes and penalties, and because the IRS did not give notice to the debtor that the debtor was being assessed with a civil penalty for 1985 and 1986 taxes.

The proof of claim is prima facie evidence of the validity of the claim and its amount. Fed.R.Bankr.P. 3001(f). The objecting party has the burden to "produce evidence which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." In re Consolidated Pioneer Mortgage, 178 B.R. 222, 225 (B.A.P. 9th Cir. 1995). The debtor has not carried this burden. There is no evidence to support any of the assertions in the objection. Even though not required to, the IRS has come forward with evidence which rebuts the debtor's supported allegations.

11. 00-26844-A-13L NINA E. COLE HEARING - AMENDED MOTION
JLB #1 TO MODIFY AND CONFIRM FIRST
AMENDED CHAPTER 13 PLAN AFTER
CONFIRMATION
3-15-02 [71]

Tentative Ruling: The motion to modify the confirmed plan is denied and the objection is sustained. First, because the judicial lien of Club Med has not been avoided in its entirety, its lien, to the extent not avoided, must be provided for in the plan. The plan makes no provision for it. This violates 11 U.S.C. § 1325(a)(5). Second, the plan is ambiguous. It recites a payment schedule different from that proposed in the motion filed to confirm the plan. Under the terms proposed in the plan, the debtor is in default of the plan.

12. 00-33444-A-13L ROY/ALEASE WILSON HEARING - MOTION FOR
EBN #1 RELIEF FROM AUTOMATIC STAY
TRAVIS CREDIT UNION, VS. 3-5-02 [52]
PART II

Tentative Ruling: The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded. The plan requires direct payments to the movant. The debtor has defaulted in making two monthly payments as required by the plan. This is cause to terminate the stay. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

13. 97-35444-A-13L DARYL/BARBARA BENDER HEARING - MOTION TO
EJS #1 AVOID LIEN
VS. FOOTHILL COLLECTION SERVICES O.S.T.
3-25-02 [63]

Tentative Ruling: The motion pursuant to 11 U.S.C. § 522(f)(1)(A) is denied. The subject real property has a value of \$160,000.00 of the date of the petition. The unavoidable liens total \$133,462.00. A review of Schedule C reveals that the debtor claimed no exemption for the equity in the property. Therefore, the respondent's judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property does not impair an exemption.

14. 01-30445-A-13L CHARLES/BARBARA HEARING - MOTION FOR
OHP #1 BRIDGEWATER RELIEF FROM AUTOMATIC STAY ETC
COUNTRYWIDE HOME LOANS, INC., VS. 3-11-02 [39]
PART II

Tentative Ruling: Movant seeks relief from stay with respect to Debtor's residence. Movant is secured by a deed of trust encumbering the property. The plan requires that the post-petition note installments be paid directly to Movant. Allegedly, Debtors have not made approximately four (4) post-petition payments to Movant, plus two monthly installments since the petition was filed, for a total default of \$8,806.90, excluding attorney's fees. Debtors admit a portion of the default. They paid the amounts in Movant's accounting plus an additional \$1,000.00 on October 17, 2001, and \$1,599.00 on March 11, 2002. This leaves \$5,542.16, plus applicable late charges, to be paid through April.

Debtors propose to cure the remaining default at or prior to the hearing.

If these overdue post-petition direct payments including applicable late charges are not received by Movant's counsel on or before April 15, 2002, the court will terminate the stay on the movant's further ex parte application.

The loan documentation contains an attorney's fee provision and Movant is an over-secured creditor. Fees and costs of \$675 or, if less, the amount actually payable by Movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees shall be paid through the plan on condition that Movant's proof of claim is amended and served upon the Trustee.

15.	01-26452-A-13L ANDY/JUNE ISOLA AC #1 CHASE MANHATTAN MORT. CORP., VS.	HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY ETC 3-1-02 [12] PART II
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Tentative Ruling: The motion is denied. The movant asserts that the debtor has made no post-petition payments as required by the plan. The debtor, however, has produced evidence of payments in June, July, August, September, October, November, December 2001, and in January and February 2002. To say the least, the movant's evidence is suspect. No fees and costs are awarded.

16.	01-30352-A-13L KRISTIN MOORE DGN #1 FORD MOTOR CREDIT CO., VS.	HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 2-27-02 [27] PART II
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Tentative Ruling: The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. The debtor has been unable to confirm a plan despite reasonable opportunity to do so. Since the case was filed, the debtor has made no contract payments to the movant. Because no plan has been confirmed, none of the plan payments held by the trustee have been distributed to the movant or the other creditors. 11 U.S.C. § 1326. Given the inability of the debtor to confirm a plan, this is unlikely to change in the near future. The debtor continues to use the vehicle securing the claim and that vehicle has a value of less than the amount owed to the movant. The foregoing indicates that the movant's interest in its collateral is not adequately protected. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

17. 01-22958-A-13L PATRICK/NANCY LAPIN HEARING - MOTION
FW #2 FOR A PROTECTIVE ORDER
3-20-02 [125] O.S.T.

Tentative Ruling: The motion is granted in part. Based on the medical evidence previously presented to the court, a protective order will be issued precluding the examination of Mr. Lapin. This order is issued in the expectation that he will not be testifying at the evidentiary hearing. If he will testify, the court will permit an examination.

As to the remainder of the protective order, the motion is denied. There is no evidence with the motion. While there have been substantial and lengthy proceedings in this case, the procedural posture has changed and the objecting creditor is entitled to investigate whether the debtors have accounted for the money that the debtors were unable to account for at the discharge/dischargeability trial. This is relevant to good faith under 11 U.S.C. § 1325(a)(3).

18. 02-20965-A-13L JEZELLE MONIQUE CORBIN HEARING - MOTION
JDC #1 AND OPPOSITION TO DEBTOR'S
MOTION TO VALUE COLLATERAL
OF SCHOOLS FINANCIAL
CREDIT UNION
2-19-02 [8]

Tentative Ruling: The objection to the \$3,000.00 valuation of the objecting creditor's collateral, a motor vehicle, is sustained in part. The plan includes a motion by the debtor urging a \$3,000.00 valuation. The valuation motion includes the declaration of the debtor testifying that the subject vehicle has a value of \$3,000.00. A debtor may testify regarding the value of property owned by the debtor. Fed.R.Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980). In this case, the debtor's opinion appears to be based on wholesale value given in the Kelley Blue Book.

The creditor maintains that the value of the vehicle should be determined by the retail value suggested by the Kelley Blue Book, \$7,600.00. Nothing in Rash v. Associates Commercial, 138 L.Ed.2d 148 (1997), compels the conclusion that retail value is replacement value. Indeed, it suggests the two are not equivalent. Id. at 160, n. 6 ("Whether replacement value is the equivalent of retail value, wholesale value, or some other value will depend on the type of debtor and the nature of the property. We note, however, that replacement value, in this context, should not include certain items. For example, where the proper measure of the replacement value of a vehicle is its retail value, an adjustment to that value may be necessary: A creditor should not receive portions of the retail price, if any, that reflect the value of items the debtor does not receive when he retains his vehicle, items such as warranties, inventory storage, and reconditioning."). Therefore, the creditor's argument that the court should simply adopt the retail valuation is not persuasive.

The creditor also suggests that the court adopt a valuation that is midway between the retail and wholesale values given in the Blue Book. The Supreme Court in Rash also rejected valuations that were based on the midpoint between the wholesale and retail value or a "split-the-difference" approach suggested by the creditor. The mechanical use of the value midpoint between high/retail and low/wholesale is not appropriate. Id. at 159-160. This is the same approach to valuation adopted in Matter of Hoskins, 102 F.3d 311 (7th Cir. 1996) but rejected in Rash.

A perusal of "on line version" of the Kelley Blue Book at www.kbb.com, reveals another data base more relevant than the retail and wholesale values. Kelley Blue Book also reports a "private party value" on its Internet site. This is the value "you might expect to pay for a used car when purchasing from a private party." In other words, the replacement cost of the vehicle. This value does not include warranties, inventory storage, and reconditioning charges as does the retail valuation. The private party value in this case is \$4,690.00. The clerk shall append this ruling to the minutes along with the Kelley Blue Book Private Party Report.

The court concludes the replacement value of the vehicle was \$4,690.00 on the date of the petition. Because the plan does not provide for the payment of this amount, the objection is sustained.

19. 02-20965-A-13L JEZELLE MONIQUE CORBIN HEARING - OBJECTION
NLE #1 TO CONFIRMATION OF PLAN
BY TRUSTEE
3-8-02 [15]

Tentative Ruling: The objection is sustained. The debtor has not accurately projected expenses on Schedule J. For instance, no amount is budgeted for auto insurance even though the debtor owns a car that is encumbered by a loan. Also, the expenses for food, medical and dental appear to be unrealistically low. The court does not believe the debtor has accurately projected her expenses. They are likely to be significantly higher. Consequently, she will not have the disposable income necessary to confirm a plan.

20. 01-29066-A-13L LINDA M. LUIS HEARING - MOTION
AMH #1 TO APPROVE FIRST AMENDED
CHAPTER 13 PLAN
3-5-02 [36]

Tentative Ruling: The motion is denied. The plan seeks to compel Zions First National to seek payment from collateral owned by a nonbankruptcy codebtor. If this is insufficient to pay its claim, only then will it be paid from a refinance of the debtor's residence.

There are two problems with this treatment. There is no basis in the contract or the Bankruptcy Code for compelling the creditor to first seek satisfaction for its claim from collateral owned by the codebtor. Any arrangement between the debtor and the codebtor regarding the payment of the claim cannot be foisted onto the creditor. The debtor is liable for the claim and her property secures the claim. The creditor has a right to be paid in this case or from the codebtor. To the extent paid by the codebtor, the debtor will not have to pay the claim. If the debtor pays the claim, she may have recourse against the codebtor. But the debtor cannot unilaterally force the creditor to proceed first against the codebtor. Second, assuming this was possible, there is no evidence that the debtor has the ability to refinance her residence or that any refinance will pay off the creditor's claim. The plan is not feasible.

Matters called beginning at 10:00 a.m.

21. 01-27474-A-13L LINDA F. WASHINGTON HEARING - MOTION FOR
AC #1 RELIEF FROM AUTOMATIC STAY ETC
FLEET MORTGAGE CORP., VS. 3-1-02 [22]
PART II

Tentative Ruling: The motion is denied. Based on the debtor's declaration, the court concludes that the movant's accounting does not include two payments, one tendered in August 2001 and a second tendered in February 2002. With these payments, the debtor has not failed to tender any of the post-petition payments. There is no cause to terminate the stay. No fees and costs are awarded.

22. 00-23277-A-13L DIRK J. KUIVENHOVEN HEARING - MOTION TO
DNLC #27 TO CONVERT CASE TO CHAPTER 7
3-11-02 [319]

Tentative Ruling: The motion is granted provided either the chapter 13 trustee or the creditors filing support for the motion join in it. The former chapter 7 trustee no longer has any standing to make the motion. See In re Delash, 260 B.R. 4 (Bankr. E.D. Cal. 2000) (holding: "Once a chapter 7 case is converted to chapter 13, 'the service of any trustee . . . that is serving in the case before such conversion' is terminated. 11 U.S.C. § 348(e). Consequently, courts generally hold that the former chapter 7 trustee has no standing to seek reconversion of the case or to otherwise act for the bankruptcy estate. See e.g., In re Kleber, 81 B.R. 726, 727 (Bankr. N.D. Ga. 1987); In re Wells, 87 B.R. 732, 736 (Bankr. N.D. Ga. 1988); In re Rakosi, 99 B.R. 47, 50 (Bankr. S.D. Cal. 1989).").

On this condition, the motion is granted. The debtor is an admitted identity thief. This case was filed as part of an effort to derail certain state court litigation. When his scheme was uncovered, he and his spouse entered into a settlement with the chapter 7 trustee. Pursuant to the compromise, the debtor waived his discharge and he and his spouse agreed to provide approximately \$1,000,000 in assets to pay claims. The debtor and his spouse were given some leeway to adjust the claims against the estate. When they failed to act diligently, the chapter 7 trustee stepped in and began the process of paying claims by liquidating property. The debtor converted to chapter 13 to preempt the chapter 7 trustee.

The court grants the motion for several reasons. First, it is clear from the amount of the claims against the estate that they will not be paid from the debtor's income. His schedules and statement of financial affairs do not support the ability to pay even a small fraction of the claims from current income. Instead, it is clear that claims will be paid by liquidating the same property the trustee was liquidating and the property being contributed by the debtor's spouse. This can be accomplished, from the point of view of the creditors, most efficiently under chapter 7.

Second, as just indicated, the debtor has no demonstrated track record of income with which to fund a plan.

Third, the debtor has failed to appear before the chapter 13 trustee at a business review. The debtor is breaching his duty to cooperate with the chapter 13 trustee. 11 U.S.C. § 521.

Fourth, given the debtor's conduct in filing this petition and one other

petition, the court does not trust the debtor to act with the necessary fiduciary compassion for his creditors. His theft of financial identities and filing of petitions in the names of other persons gives the court no reason to believe that the debtor intends to do the right thing with his creditors. To the contrary, the conversion to chapter 13 appears to be the latest effort to hinder, delay and defraud creditors, rather than to pay creditors.

Fifth, the compromise entered into with the trustee, which included a waiver of a discharge, amounts to a recognition that the debtor cannot be trusted and that creditors will be paid only by a liquidation of assets. The court will not permit the debtor to evade his agreement with the trustee in the absence of convincing evidence that he can and will confirm and perform a plan.

Any one of the foregoing factors warrants conversion to chapter 7. The case will be converted to chapter 7 and the case retransferred to Judge Klein.

23.	00-23277-A-13L RJH #2	DIRK J. KUIVENHOVEN	CONT. HEARING - FIRST INTERIM APPLICATION FOR COMPENSATION FOR ACCOUNTANT FOR CHAPTER 7 TRUSTEE (\$1,254.00) 2-20-02 [299]
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Tentative Ruling: The motion is granted. The fees requested represent reasonable compensation for actual, necessary, and beneficial accounting services rendered to the chapter 7 in connection with his administration of the estate.

24.	02-21581-A-13L	LEWIS/KAREN CHRISTENSON	HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 3-7-02 [8]
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Tentative Ruling: The petition was filed on February 12, 2002. Fed.R.Bankr.P. 1007(c) and 11 U.S.C. § 521(1) required that the debtor file a statement of financial affairs and schedules no later than February 27, 2002. Neither were filed. This case was converted to one under chapter 13 on March 12, 2002. Pursuant to Fed.R.Bankr.P. 3015(b), a chapter 13 plan was due no later than March 27, 2002. One has not been filed. Therefore the case is dismissed.

The failure of the debtor to file these documents indicates that the debtor has willfully failed to appear before the court in the proper prosecution of the debtor's bankruptcy case. Accordingly, the dismissal of the case is pursuant to section 109(g) (1) of the Bankruptcy Code.

25.	01-27282-A-13L	DEBORAH MARIE DEGISCHER	HEARING - MOTION FOR CONFIRMATION OF AMENDED PLAN 3-8-02 [47]
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Tentative Ruling: The motion to confirm the chapter 13 plan is denied and the objection is sustained. First, taking into account the stream of payments promised by the plan and the amount of claims to be paid, the plan will not be completed within 60 months as required by 11 U.S.C. § 1322(d). It will take 79 months to complete the plan. Second, given the termination of the stay in favor of Chase, it appears that the plan is not feasible - Chase will be

foreclosing on its collateral rather than accepting payments under the plan.

26. 96-30184-A-13L JAMES W. AVERY HEARING - MOTION
EJS #1 FOR HARDSHIP DISCHARGE
2-12-02 [47]

Tentative Ruling: The motion is denied. The only evidence offered to support the motion is that the debtor's business is no longer operating and the debtor's pension income has decreased.

11 U.S.C. § 1328(b) permits a discharge "at any time after confirmation of the plan" if three cumulative conditions are met: 1) the debtor's failure to complete payments under the plan is due to circumstances "for which the debtor should not justly be held accountable"; 2) the debtor has satisfied the best interests of creditors test of 11 U.S.C. § 1325(a)(4); and 3) modification of the plan is not practicable.

The mere fact that the debtor's income has been reduced does not mean this is a circumstance "for which the debtor should not justly be held accountable". In the words of one commentator, "*Hardship discharge under § 1328(b) is reserved for the truly worst of the awfuls - something more than just the temporary loss of a job or temporary physical disability. . . Changes in financial condition that are less than total collapse are material for modification after confirmation but support a hardship discharge only if the debtor is unable to fund any modified plan.*" Lundin, 3 Chapter 13 Bankruptcy, § 9.20, p. 9-45 (2d ed. 1994). In Judge Lundin's latest treatise he states: "If the 'not justly . . . held accountable' standard means anything, then bankruptcy courts must reserve hardship discharge for circumstances exceeding the normal or ordinary range of mishaps that befall Chapter 13 debtors. . . Circumstances indicative of true hardship are permanent in nature. . . ." Lundin, 4 Chapter 13 Bankruptcy, § 353.1, p. 353.1-3 (3rd ed. 2000).

The mere fact that the debtor's income was reduced does not satisfy this standard. Why was the business closed? Why did the debtor's business income decrease? Were the causes beyond the control of the debtor?

Nor is there any evidence that creditors have been paid what they would be paid in a chapter 7 liquidation.

27. 99-35385-A-13L ANDRE/KARLA WYNNE HEARING - MOTION
WW #3 TO CONFIRM FIRST MODIFIED
CHAPTER 13 PLAN
3-6-02 [55]

Tentative Ruling: The motion to modify the confirmed plan is denied and the objection is sustained. The debtor's income and employer have changed. Yet, no amended Schedule I has been filed. Without this, or comparable evidence, the debtor cannot establish that the modified plan is feasible or commits all disposable income to the payment of claims.

28. 00-23687-A-13L DELLA A. WILSON HEARING - MOTION
SDB #2 TO MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
3-11-02 [50]

Tentative Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329. The objection by Patelco that the modified plan conflicts with Order Conditioning Continuance of Automatic Stay is overruled. That order merely states that the debtor will make plan payments and keep the objecting creditor's collateral insured. It does not bar the debtor from seeking a plan modification.

29. 02-22188-A-13L ETTIENE/TIFFANI HEARING - ORDER
HARRINGTON TO SHOW CAUSE RE DISMISSAL,
CONVERSION OR IMPOSITION OF
SANCTIONS
3-7-02 [7]

Tentative Ruling: The debtor has failed to file a verified master mailing list as required by Fed.R.Bankr.P. 1007(a)(1) and Local Bankruptcy Rule 1007-1(b). The debtor has five days to file the required list or the case will be dismissed without further notice or hearing.

30. 01-34489-A-13L WILLIAM/CYNTHIA MASON HEARING - MOTION FOR
RDW #1 RELIEF FROM AUTOMATIC STAY ETC
TMS MORTGAGE, INC., VS. 3-12-02 [25]
PART II

Tentative Ruling: Movant seeks relief from stay with respect to Debtors' real property, located at 2090 Chalet Road in Tahoe City, California, also identified by Movant as 2090 Chalet Road in Alpine Meadows, California. Movant is secured by a deed of trust encumbering the property. The plan requires that the post-petition note installments be paid directly to Movant. Allegedly, Debtors have not made approximately two (2) post-petition payments (January through February 2002) to Movant, for a total of \$1,652.60, excluding attorney's fees. Debtors oppose, contending that: 1) they made the January 2002 payment, but Movant had erroneously applied it to an outstanding pre-petition installment; and 2) Movant did not accept the February 2002 payment until March 15, 2002, after the filing of the instant motion.

The motion is denied. Debtors are required by the plan to pay directly to Movant all installment payments coming due after the filing of the petition. Movant alleges that Debtors have failed to make specific post-petition installment payments. Debtors have provided evidence, however, that these specific installments were paid.

No fees and costs are awarded.

31. 99-20692-A-13L RUSSELL/VALERIE HODGES HEARING - MOTION
MET #2 FOR ORDER ALLOWING DEBTOR
TO OBTAIN CREDIT O.S.T.
3-15-02 [87]

Tentative Ruling: The motion is denied because there is no evidence that the debtor will be able to repay the loan and continue to make plan payments. The loan will result in the debtor paying an additional \$650.00 in debt service each month with no demonstration that the debtor has the additional income.

FINAL RULINGS BEGIN HERE

32. 97-27700-A-13L LANING/BEVERLY NEWMAN HEARING - MOTION
RD #1 TO MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
3-12-02 [22]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

33. 01-33202-A-13L DAVID/SANDRA WHITMORE HEARING - MOTION
MWB #4 FOR APPROVAL OF ATTORNEYS'
FEES AND COSTS PAYABLE
(\$3,354.00 FEES; \$205.00 EXP.)
3-1-02 [20]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. The compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

34. 00-30803-A-13L KELLY F. DAVIS HEARING - SECOND
SAC #4 INTERIM APPLICATION FOR
ATTORNEYS' FEES OF
SCOTT A. COBEN & ASSOCIATES
(\$2,612.38)
3-11-02 [68]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted provided that title to the vehicle has been reconveyed to the debtor as previously ordered by the court. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. The compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

35. 99-36303-A-13L JIMMY/TERESA TENNER HEARING - MOTION
MET #1 TO MODIFY PLAN
2-26-02 [55]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion to modify the confirmed plan is denied and the objection is sustained. The debtor last made a plan payment in August 2001. The motion is accompanied by no evidence. Further, its allegations do not explain why the debtor was unable to make payments pursuant to the confirmed plan. Consequently, the court has no evidence that the problem causing the default has been eliminated or that the debtor will be able to make the proposed plan payments (which are larger than the payments required by the confirmed plan). In short, the debtor has not carried the burden of showing that the plan is feasible. 11 U.S.C. §

1325(a)(6).

36. 02-20605-A-13L DONALD/VICTORIA OSBORN HEARING - OBJECTION
NLE #1 TO CONFIRMATION OF PLAN
BY TRUSTEE
3-12-02 [22]

Final Ruling: The court continues the hearing to April 16, 2002, at 9:00 a.m. so that the objection may be considered with the objection of Ford Motor Credit.

37. 02-20605-A-13L DONALD/VICTORIA OSBORN HEARING - OBJECTIONS
TR #1 TO MOTION TO VALUE COLLATERAL
AND CONFIRMATION OF CHAPTER 13
PLAN BY JOHN DEERE COMPANY
3-12-02 [26]

Final Ruling: The court continues the hearing to April 16, 2002, at 9:00 a.m. so that the objection may be considered with the objection of Ford Motor Credit.

38. 01-34912-A-13L MARY KAY EMERSON HEARING - MOTION FOR
RVD #1 RELIEF FROM DEADLINE FOR
FILING CLAIM OF EXEMPTIONS
3-8-02 [18]

Final Ruling: The court continues the hearing to May 7, 2002, at 9:00 a.m. because the movant has served the U.S. Trustee at the wrong address. The U.S. Trustee has not been located at 650 Capitol Mall for approximately two years. The movant shall give notice of the continued hearing in compliance with Local Bankruptcy Rule 9014-1.

39. 01-33013-A-13L TRINA NAILOR HEARING - MOTION
PRJ #2 TO CONFIRM SECOND AMENDED
PLAN AND ORDER CONFIRMATION
3-1-02 [20]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied and the objection is sustained. The plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$555.00 as required by the modified plan. The plan does not comply with 11 U.S.C. § 1325(a)(6). However, if the delinquent amount, plus any outstanding plan payments accruing since the trustee's objection was filed, is paid to the trustee no later than the close of business on April 3, 2002, or if the trustee files a pleading on or before April 3, 2002, voluntarily dismissing his objection, the court will nonetheless confirm the plan.

40. 00-33514-A-13L VIRGILIO CORDOVA HEARING - MOTION
TJW #1 TO VOID LIEN
VS. NORWEST FINANCIAL 2-26-02 [11]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied without prejudice. First, the only evidence supporting the motion is the declaration of the debtor's counsel. He has no demonstrated personal or expert knowledge

April 2, 2002, at 9:00 a.m.

regarding the value of the subject property and the amount of unavoidable and avoidable liens. Second, the allegations of the motion are contradicted by the Schedules. Schedule A indicates that the subject property has a value of \$260,000.00 but the motion asserts that it has a value of \$195,000.00. Schedule D indicates the unavoidable liens total \$193,000.00, not the \$208,000.00 alleged in the motion. Third, the debtor is apparently attempting to avoid the lien pursuant to 11 U.S.C. § 522(f)(1)(A) in connection with a 1996 chapter 7 petition. If the motion relates to that case, the chapter 7 case must be reopened and the motion presented to the judge presiding in that case.

41. 00-33514-A-13L VIRGILIO CORDOVA HEARING - MOTION
TJW #2 TO VOID LIEN
VS. CALIFORNIA SERVICE BUREAU 2-26-02 [14]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied without prejudice. First, the only evidence supporting the motion is the declaration of the debtor's counsel. He has no demonstrated personal or expert knowledge regarding the value of the subject property and the amount of unavoidable and avoidable liens. Second, the allegations of the motion are contradicted by the Schedules. Schedule A indicates that the subject property has a value of \$260,000.00 but the motion asserts that it has a value of \$195,000.00. Schedule D indicates the unavoidable liens total \$193,000.00, not the \$208,000.00 alleged in the motion. Third, the debtor is apparently attempting to avoid the lien pursuant to 11 U.S.C. § 522(f)(1)(A) in connection with a 1996 chapter 7 petition. If the motion relates to that case, the chapter 7 case must be reopened and the motion presented to the judge presiding in that case.

42. 01-26115-A-13L JEFFERY ROBERT HEARING - AMENDED MOTION FOR
CWN #1 LANTERNO RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA MORTGAGE, VS. 3-7-02 [12]
PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay two monthly post-petition installments. This is cause to terminate the automatic stay. The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of \$675 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid by the debtor directly to the movant. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

43. 01-33815-A-13L LINDA CALDWELL- HEARING - MOTION FOR
SPS #2 BAZEMORE RELIEF FROM AUTOMATIC STAY
AMERICAN GENERAL FINANCE, VS. 3-13-02 [29]
PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied. The plan provides for payment in full of the movant's claim in Class 2. This means that the plan does not require direct post-petition contract payments by the debtor to the movant. Therefore, the failure of the debtor to make contract payments is not cause for termination of the stay. Further, because the movant's loan matures during the case, the debtor may modify the claim despite the anti-modification provision of 11 U.S.C. § 1322(b)(2). 11 U.S.C. § 1322(c). Finally, the plan is not in default, therefore, there is no cause to terminate the stay. The debtor is making direct payments to the senior lien holder and the plan payments are current.

The only other basis for terminating the automatic stay is the fact that the debtor and her former spouse have filed four petitions. However, the court has already overruled objections to the proposed chapter 13 plan on the ground that it has been proposed in bad faith. The court will not again address this point.

No fees and costs are awarded.

44. 01-20016-A-13L GARY/JOYCE BULLIS HEARING - MOTION FOR
MB #1 RELIEF FROM AUTOMATIC STAY
WASHINGTON MUTUAL HOME 3-6-02 [23]
LOANS, INC., VS. PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(1). While the movant maintains that the debtor has failed to make two direct post-petition installments to the movant, the debtor has provided evidence that the default is limited to approximately one installment. The movant has failed to account for the February 2001 installment. The debtor does not deny that one other direct post-petition installment has not been made. The debtor agrees to pay this default within a short period. The debtor has demonstrated to the satisfaction of the court that this cure is likely to be paid. If the debtor does not timely tender the April and May installments and if the debtor does not cure the post-petition arrearage by May 15, 2002, the stay will be terminated on the ex parte application of the movant (if supported by a sufficient declaration establishing a default of the order). Upon service of the order on the debtor, debtor's counsel, and the trustee, the movant is authorized to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

45. 01-30917-A-13L MICHAEL G. REYNOLDS HEARING - MOTION FOR

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay five monthly post-petition installments. This is cause to terminate the automatic stay. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

46. 02-21118-A-13L JAMES HOLLIS, JR. HEARING - OBJECTION
LJL #1 TO CONFIRMATION OF PLAN
BY TRUSTEE
3-12-02 [14]

Final Ruling: The debtor has failed to respond to the matter on calendar. Because the debtor has come forward with no opposition or response, this matter is suitable for disposition without oral argument. The objection is sustained. The debtor has failed to use the court's standard chapter 13 plan as required by General Order 01-02, ¶ 2(a). The form used was superceded in March 2002.

The debtor has 15 days to file an amended plan on the required form and a motion to confirm it. Once filed, the debtor has 30 days to obtain confirmation. If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

47. 97-39218-A-13L GREGORY LOUIS HEARING - MOTION
WG #4 GREENFIELD FOR MODIFICATION OF PLAN
AFTER CONFIRMATION
3-8-02 [40]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

48. 01-28320-A-13L JONATHAN/ANGELA DUGIE HEARING - MOTION FOR
MB #1 RELIEF FROM AUTOMATIC STAY
THE LEADER MORTGAGE CO., VS. 2-28-02 [18]
PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay six monthly post-petition installments. This is cause to terminate the automatic stay.

While opposition was filed, it does not contest the default. It further admits that the debtor has become unemployed. While an offer to cure the default has been made, the debtor has failed to provide persuasive evidence that a cure can be made.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

49. 01-28320-A-13L JONATHAN/ANGELA DUGIE HEARING - MOTION FOR
MB #2 RELIEF FROM AUTOMATIC STAY
THE LEADER MORTGAGE COMPANY, VS. 2-28-02 [22]
PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay six monthly post-petition installments. This is cause to terminate the automatic stay.

While opposition was filed, it does not contest the default. It further admits that the debtor has become unemployed. While an offer to cure the default has been made, the debtor has failed to provide persuasive evidence that a cure can be made.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

50. 02-20920-A-13L JOHN A. KIMBALL HEARING - MOTION
MG #1 TO CONFIRM FIRST MODIFIED
CHAPTER 13 PLAN
3-4-02 [12]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

51. 98-32920-A-13L MICHAEL/SANDRA KILIAN HEARING - MOTION
DGT #4 TO MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
3-7-02 [60]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

52. 00-22022-A-13L ELENA M. DRAHONY CONT. HEARING - AMENDED MOTION
EE #1 FOR RELIEF FROM AUTOMATIC STAY
BENEFICIAL CALIFORNIA, INC., VS. 2-20-02 [25]
PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay approximately three monthly post-petition installments. This is cause to terminate the automatic stay. The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of \$675 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid by the debtor directly to the movant. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

53. 01-32822-A-13L EDGARDO/SHU WONG HEARING - MOTION FOR
MPD #1 RELIEF FROM AUTOMATIC STAY
GMAC MORTGAGE CORP., VS. 3-11-02 [12]
PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay two monthly post-petition installments. This is cause to terminate the automatic stay.

While opposition was filed, it contains no evidence to support the assertion that the debtor has not defaulted on direct post-petition payments to the movant.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of \$675 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid by the debtor directly to the movant. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

54. 01-32525-A-13L DAVEY/MONA MCBRAYER HEARING - MOTION FOR
RJM #4 RELIEF FROM AUTOMATIC STAY
LEAH J, VS. 2-5-02 [39]

Final Ruling: The parties have continued the hearing on this matter to April 25, 2002, at 9:00 a.m.

55. 01-34025-A-13L JEROME/REBECCA LOK HEARING - MOTION
DKH #2 TO CONFIRM 2ND AMENDED
CHAPTER 13 PLAN
3-11-02 [29]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

56. 01-33326-A-13L EDWARD/VERDIS THOMAS HEARING - MOTION
JLB #3 TO AMEND AND CONFIRM
CHAPTER 13 PLAN
3-1-02 [48]

Final Ruling: The parties have continued the hearing on this matter to April 16, 2002, at 9:00 a.m.

57. 00-29927-A-13L JERRY/LINDA TATE HEARING - MOTION
MWB #14 FOR ORDER PARTIALLY
DISALLOWING CLAIM
2-27-02 [202]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained. The claim seeks payment of post-petition attorneys' fees incurred by the holder of a secured claim. To claim such fees, it must be established that the claimant is over-secured. 11 U.S.C. § 506(b). Since the real property has been sold and there were insufficient sale proceeds to pay the attorney's fees, it is clear that the claimant was not over-secured. The claim for attorney's fees is disallowed.

58. 00-30729-A-13L MICHAEL/CHERYL MORRIS HEARING - MOTION FOR
SW #2 RELIEF FROM AUTOMATIC STAY
WELLS FARGO FINANCIAL ACCEPTANCE, VS. 3-11-02 [192]
PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied. The movant's claim is being paid through the plan as a Class 2 secured claim. When the motion was filed, the debtor had defaulted in making plan payments. However, the default has since been cured or will be cured in the near future and the debtor is implementing a wage order to minimize the risk of future defaults. Further, the vehicle securing the movant's claim is insured and the movant is named as the loss payee. There is no cause for termination of the stay pursuant to 11 U.S.C. § 362(d)(1). To the extent relief is sought pursuant to 11 U.S.C. § 362(d)(2) the motion is denied because the subject vehicle is necessary to the debtor's reorganization and because the only basis for relief from the automatic stay once a plan is confirmed is a breach of the plan. The loan documentation contains an attorney's fee provision and Movant is an over-secured creditor. Fees and costs of \$675 or, if less, the amount actually payable by Movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees shall be paid through the plan on condition that Movant's proof of claim is amended and served upon the Trustee.

59. 00-31229-A-13L STUART FINGER CONT. HEARING - OBJECTION
JAT #2 TO CLAIM OF STATE BOARD
OF EQUALIZATION
8-24-01 [32]

Final Ruling: The parties have continued the hearing on this matter to June 4, 2002, at 9:00 a.m.

60. 00-29330-A-13L JUDY WUDEL HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
WASHINGTON MUTUAL BANK, VS. 3-13-02 [52]
PART II

Final Ruling: After the following ruling was prepared, the parties advised the court that they had agreed to continue the hearing to May 7, 2002, at 9:00 a.m. The hearing is ordered continued. However, if nothing additional is filed, the following is likely to be the ruling at the continued hearing.

The motion is denied without prejudice. The debtor has tendered a monthly

payment directly to the movant or its predecessor for each post-petition month. However, there is a dispute regarding the amount of the monthly installment. Facially, it appears that the movant is increasing the post-petition installment in order to collect pre-petition arrears and advances. This dispute will be resolved by the court in connection with a claim objection set for hearing on May 7, 2002. Given that the debtor has attempted to tender monthly payments while in chapter 13 and given the long standing dispute between the parties regarding the amount of the monthly installment which the debtor has attempted to resolve informally to no avail, the court finds no cause to terminate the stay. The motion may be renewed after the claim objection is resolved or earlier for good cause. No fees and costs are awarded.

61. 01-21530-A-13L GWENDOLYN C. KELLY HEARING - MOTION
WW #1 TO CONFIRM FIRST MODIFIED
CHAPTER 13 PLAN
3-6-02 [18]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

62. 99-33630-A-13L LOUIS/OMA LOCKREM HEARING - MOTION
KSR #2 TO DISMISS CASE
3-4-02 [39]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied. The fact that the debtor fell two months behind in making direct payments to the movant is an insufficient basis for dismissing the case. The movant has been paid its pre-petition arrearage during this case and it is protected by an equity cushion of \$650,000.00. Further, the post-petition default has been substantially cured. This motion was overkill in the extreme.

63. 99-33630-A-13L LOUIS/OMA LOCKREM HEARING - MOTION FOR
KSR #3 RELIEF FROM AUTOMATIC STAY ETC
GLENN AND DONNA HOLDENER, VS. 3-4-02 [35]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied. The default is not material considering the amount of equity protecting the movant and considering the substantial cure of the default. No fees and costs are awarded.

64. 99-33630-A-13L LOUIS/OMA LOCKREM HEARING - COUNTER-MOTION TO
KSR #3 COMPEL SECURED CREDITOR TO
RESCIND RECORDED NOTICE OF DEFAULT
3-26-02 [43]

Final Ruling: The motion is denied without prejudice. The relief sought must be requested in an adversary proceeding. Fed.R.Bankr.P. 7001(2) & (7).

65. 02-20631-A-13L ANTONINO MEDURI HEARING - MOTION
TO VALUE COLLATERAL
OF CONSECO
2-27-02 [10]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of \$210.00 on the date the petition was filed. That date is the effective date of the plan. \$210.00 of its claim is an allowed secured claim. When paid \$210.00, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

66. 02-20432-A-13L LINDA LOUISE MILSTEAD HEARING - OBJECTION
MWB #1 TO MOTION TO VALUE COLLATERAL
OF PAUL BELL
2-25-02 [12]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The objection is sustained for the reasons stated in ruling on Motion Control No. MWB #3.

67. 02-20432-A-13L LINDA LOUISE MILSTEAD HEARING - MOTION
MWB #3 FOR ORDER CONFIRMING FIRST
AMENDED CHAPTER 13 PLAN
3-6-02 [19]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion to confirm the chapter 13 plan is denied and the objection is sustained. First, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$150.00. The plan does not comply with 11 U.S.C. § 1325(a)(6). Second, with the proposed \$159.00 direct payment to secured creditor Bell, the debtor has no disposable income. Schedules I and J show disposable income of \$150.00 a month. The plan is not feasible. 11 U.S.C. § 1325(a)(6). Third, the motion to value the real property collateral of Mr. Bell at \$60,000.00 has been denied. Based on his evidence, it appears that the subject property has a value of no less than \$80,000.00. At this value, taking into account the senior lien of Washington Mutual at \$51,338.00, Mr. Bell is fully secured. Fourth, even if the property is worth \$60,000.00, Mr. Bell holds a second deed of trust on the debtor's residence. Because at this valuation Mr. Bell's deed of trust is partially collateralized, 11 U.S.C. § 1322(b)(2) operates to prevent the "strip down" of his claim. Nobelman v. American Savings Bank, 508 U.S. 324 (1993); In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

68. 02-20432-A-13L LINDA LOUISE MILSTEAD HEARING - OBJECTION
NLE #1 TO CONFIRMATION OF PLAN
BY TRUSTEE
2-27-02 [15]

Final Ruling: The matter on calendar is denied or overruled as moot - the debtor filed an amended plan. The trustee has also objected to the amended plan and the ruling on Motion Control Number MWB #3 addresses his objection.

69. 02-21932-A-13L CYNTHIA MARIE MARTINEZ HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL,
CONVERSION OR IMPOSITION OF
SANCTIONS
2-27-02 [4]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The case shall remain pending. The verified mailing matrix has been filed.

70. 98-20332-A-13L THOMAS L. AMOS HEARING - MOTION
EJS #1 FOR HARDSHIP DISCHARGE
3-7-02 [33]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. 11 U.S.C. § 1328(b) permits a discharge "at any time after confirmation of the plan" if three cumulative conditions are met: 1) the debtor's failure to complete payments under the plan is due to circumstances "for which the debtor should not justly be held accountable"; 2) the debtor has satisfied the best interests of creditors test of 11 U.S.C. § 1325(a)(4); and 3) modification of the plan is not practicable.

It appears from the evidence that the debtor is medically disabled and is dependent on disability benefits for his maintenance. This is a circumstance "for which the debtor should not justly be held accountable". In the words of one commentator, "*Hardship discharge under § 1328(b) is reserved for the truly worst of the awfuls - something more than just the temporary loss of a job or temporary physical disability. . . Changes in financial condition that are less than total collapse are material for modification after confirmation but support a hardship discharge only if the debtor is unable to fund any modified plan.*" Lundin, 3 Chapter 13 Bankruptcy, § 9.20, p. 9-45 (2d ed. 1994). In Judge Lundin's latest treatise he states: "*If the 'not justly . . . held accountable' standard means anything, then bankruptcy courts must reserve hardship discharge for circumstances exceeding the normal or ordinary range of mishaps that befall Chapter 13 debtors. . . Circumstances indicative of true hardship are permanent in nature. . . .*" Lundin, 4 Chapter 13 Bankruptcy, § 353.1, p. 353.1-3 (3rd ed. 2000).

Either unsecured creditors have been paid what they would have received in a chapter 7 case or they would have received nothing in a chapter 7 case.

Consistent with 11 U.S.C. § 1328(c), the order granting the motion shall provide that all creditors will have 30 days, plus three days for mailing, from the service of the order to object to the dischargeability of debts pursuant to 11 U.S.C. § 523(a)(2), (4), (6), & (15) and (c). Any discharge shall be subject to any timely complaint filed and shall not include long-term debt

classified in Class 1.

71. 01-27433-A-13L WILLA M. BROWN HEARING - MOTION
RHM #1 TO CONFIRM AN AMENDED OR
MODIFIED CHAPTER 13 PLAN
2-19-02 [32]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

72. 97-37634-A-13L GREGORY/PATRICIA DIXON HEARING - MOTION
WG #8 FOR APPROVAL OF SALE OF
REAL PROPERTY
3-11-02 [107]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion to sell real property is granted on the condition that the sale proceeds are used to pay all liens of record in a manner consistent with the plan. Insofar as surplus sale proceeds are available, they shall be paid over to the debtor. Burgie v. McDonald (In re Burgie), 239 B.R. 406, 409-410 (B.A.P. 9th Cir. 1999) ("The proceeds of the sale of a debtor's real estate in a chapter 13 case never become disposable income for the purposes of chapter 13. This result applies in a chapter 13 case whether or not the property is exempt from execution. . . . Postpetition disposable income does not include prepetition property or its proceeds.") However, if the debtor wishes some or all of the sale proceeds remaining after payment of liens of record and expenses of sale to be turned over to the trustee for distribution to other creditors, the sale order shall so provide. If, and only if, unsecured creditors are paid 100% of their claims, may the plan end prior to its stated term. The trustee must approve the form of the order.

73. 01-31542-A-13L ROBERT/JANEL SAYLOR HEARING - MOTION
RWC #1 TO CONFIRM FIRST
AMENDED PLAN
3-12-02 [11]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

74. 01-32042-A-13L INEZ R. LANE HEARING - MOTION FOR
PP #1 RELIEF FROM AUTOMATIC STAY
DRIVE FINANCIAL SVCS. OF DALLAS, VS. 2-27-02 [24]
PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded. The plan requires direct payments to the movant. The debtor has defaulted in making these three monthly payments as required by the plan. The debtor has also failed to insure the vehicle securing the movant's claim. This is cause to terminate the stay. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

75. 00-26844-A-13L NINA E. COLE HEARING - MOTION TO
JLB #2 AVOID LIEN
VS. CLUB MED 2-20-02 [58]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion pursuant to 11 U.S.C. § 522(f)(1)(A) is granted in part. The subject real property has a value of \$250,000.00 as of the date of the petition. The unavoidable liens total \$232,461.64. The debtor has an available exemption of \$5,272.03. The respondent holds a judicial lien securing a judgment of \$16,293.80, created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is \$12,266.67 in equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property to the extent of \$4,028.07 and its fixing is avoided to that extent. The remainder of the lien, \$12,266.67, is not avoided.

To the extent the creditor objects to the debtor's opinion of value, the objection is overruled. A debtor may testify regarding the value of property owned by the debtor. Fed.R.Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

76. 97-33144-A-13L APRIL D. HUDSON HEARING - MOTION
SDB #2 TO MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
3-5-02 [34]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

77. 97-35444-A-13L DARYL/BARBARA BENDER
EJS #2

HEARING - MOTION
TO REFINANCE EXISTING DEBT(S)
ON DEBTORS' RESIDENCE AND TO
PAY OFF CHAPTER 13 PLAN
3-25-02 [65]
O.S.T.

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted in part. The trustee shall approve the form of the order.

The motion to refinance the debt encumbering the debtor's real property is granted on the condition that the loan proceeds are used to pay all liens of record in a manner consistent with the plan. Insofar as surplus sale proceeds are available, they shall be paid over to the trustee to the extent requested by the debtor in the motion. The turnover of the surplus loan proceeds is voluntary. Cf. Burgie v. McDonald (In re Burgie), 239 B.R. 406, 409-410 (B.A.P. 9th Cir. 1999) ("The proceeds of the sale of a debtor's real estate in a chapter 13 case never become disposable income for the purposes of chapter 13. This result applies in a chapter 13 case whether or not the property is exempt from execution. . . . Postpetition disposable income does not include prepetition property or its proceeds.") If the debtor wishes some or all of the loan proceeds remaining after payment of liens of record and expenses of the loan to be turned over to the trustee for distribution to other creditors, the order shall so provide. However, absent either payment in full (i.e., a 100% dividend) of all filed unsecured claims or the approval of a modified plan that permits the case to be completed without payment in full of the secured claims, the plan shall not be deemed completed by payment of the surplus loan proceeds to the trustee.

78. 00-30646-A-13L FRED R. CRAIG
RHM #1

HEARING - MOTION
TO CONFIRM AN AMENDED OR
MODIFIED CHAPTER 13 PLAN
2-14-02 [24]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied without prejudice. No proposed plan has been filed. Fed.R.Bankr.P. 3015(g) provides: "A request to modify a plan pursuant to . . . § 1329 of the Code shall identify the proponent and shall be filed together with the proposed modification." The court will not approve any plan sight unseen. To do otherwise would mean neither the court, the trustee, or any party in interest could be sure that the plan in the file contains all of the plan's provisions. It would be necessary to scrutinize all documents in the file to be sure what was in the plan.

The debtor has 15 days to file an amended or modified plan and a motion to confirm it. Once filed, the debtor has 30 days to obtain confirmation. If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application. Any pending deadline to confirm a plan is extended accordingly.

79. 00-33546-A-13L JERRY W. DISMUKE HEARING - MOTION FOR
CLC #1 RELIEF FROM AUTOMATIC STAY
FEDERAL HOME LOAN MORTGAGE CORP. AND 3-6-02 [18]
ATLANTIC MORTGAGE, ET AL., VS. PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(1). The debtor has failed to pay approximately three post-petition installments. The debtor does not deny that this post-petition default has occurred. Instead, the debtor agrees to pay this default within a short period. The debtor has demonstrated to the satisfaction of the court that this cure is likely to be paid. If the debtor has not paid all post-petition arrears, including the April installment, by the last day of the grace period for the April installment, the stay will be terminated on the ex parte application of the movant (if supported by a sufficient declaration establishing a default of the order). Upon service of the order on the debtor, debtor's counsel, and the trustee, the movant is authorized to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of \$675 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees shall be paid through the plan on condition that the movant's proof of claim is amended and served upon the trustee.

80. 02-22246-A-13L ROLANDO/EDITA ROMERO HEARING - OBJECTION
LJL #1 TO CONFIRMATION OF PLAN
BY TRUSTEE
3-14-02 [6]

Final Ruling: The debtor has failed to respond to the matter on calendar. Because the debtor has come forward with no opposition or response, this matter is suitable for disposition without oral argument. The objection is sustained. The debtor has failed to use the court's standard chapter 13 plan as required by General Order 01-02, ¶ 2(a). The form used was superceded in March 2001.

The debtor has 15 days to file an amended plan on the required form and a motion to confirm it. Once filed, the debtor has 30 days to obtain confirmation. If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

81. 02-21148-A-13L BENNY/JOANNE PILLAZO HEARING - OBJECTION
NLE #1 TO CONFIRMATION OF PLAN
BY TRUSTEE
3-12-02 [12]

Final Ruling: The debtor has failed to respond to the matter on calendar. Because the debtor has come forward with no opposition or response, this matter is suitable for disposition without oral argument. The motion to confirm the chapter 13 plan is denied and the objection is sustained. First, the plan does not provide for payment in full of the priority claim of the IRS as required by 11 U.S.C. § 1322(a)(2). Second, the plan is not feasible. Schedules I and J show disposable income of \$420.72 but the plan requires a plan payment of \$960.00.

82. 00-22249-A-13L ROBERT/BARBARA ISAAC HEARING - MOTION FOR

Final Ruling: The parties have continued the hearing on this matter to April 16, 2002, at 9:00 a.m.

83. 01-25750-A-13L CASANDRA MCDOWELL HEARING - MOTION TO
AMH #1 APPROVE FIRST MODIFIED PLAN
2-28-02 [44]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied and the objection is sustained. The plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$1,200.00 as required by the modified plan. The plan does not comply with 11 U.S.C. § 1325(a)(6). However, if the delinquent amount, plus any outstanding plan payments accrued since the trustee's objection was filed, is paid to the trustee no later than the close of business on April 3, 2002, or if the trustee files a pleading on or before April 3, 2002, voluntarily dismissing his objection, the court will nonetheless confirm the plan.

84. 01-28350-A-13L ROBERT LAMBERT HEARING - MOTION
PVT #3 FOR ALLOWANCE AND PAYMENT OF
COMPENSATION TO COUNSEL FOR
CHAPTER 7 TRUSTEE AS
ADMINISTRATIVE CLAIM (\$3,540.00)
2-26-02 [76]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. The compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

85. 01-31952-A-13L JAMES/NANCY ROCKWELL HEARING - OBJECTION
RD #1 TO CLAIM OF WELLS FARGO
HOME MORTGAGE, INC.
2-28-02 [27]

Final Ruling: The objection is overruled without prejudice because it was not served on the claimant at the address stated in the proof of claim.

86. 01-31952-A-13L JAMES/NANCY ROCKWELL HEARING - MOTION TO
RD #1 CONFIRM FIRST AMENDED PLAN
3-5-02 [29]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied and the objection is sustained. The plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$320.00 as required by the modified plan. The plan does not comply with 11 U.S.C. § 1325(a)(6). However, if the delinquent amount, plus any outstanding plan payments accrued since the trustee's objection was filed, is paid to the trustee no later than the close

of business on April 3, 2002, or if the trustee files a pleading on or before April 3, 2002, voluntarily dismissing his objection, the court will nonetheless confirm the plan.

87.	99-33054-A-13L MICHAEL/IVIE DENNIS PSP #1 FIRESIDE THRIFT COMPANY, VS.	HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 3-13-02 [32] PART II
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Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded. The plan provides for the payment of the movant's secured claim but the movant did not file a proof of claim and the debtor did not file one on its behalf. As a result, in the 29 months of the plan, the movant has been paid nothing inside or outside the plan. This is cause to terminate the stay.

In Southtrust Bank of Alabama v. Thomas (In re Thomas), 883 F.2d 991 (11th Cir. 1989), *cert. denied*, 497 U.S. 1007 (1990), the Eleventh Circuit concluded that a secured claim holder need not file a proof claim and may instead simply ride through the Chapter 13 case with its lien unaffected. But because not filing a proof of claim means the creditor would receive no plan distributions, it could move for relief from the automatic stay for permission to repossess its collateral. This is despite the fact that the chapter 13 plan preserved its lien and proposed payment in full. If the debtor wished to avoid this result, he or she should have filed a proof of claim on behalf of the creditor. Accord In re Howard, 972 F.2d 639 (5th Cir. 1992); In re Linkous, 990 F.2d 160 (4th Cir. 1993).

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

88.	01-23155-A-13L KENNETH/BETTY PETERS EJS #2	HEARING - OBJECTION TO CLAIM NO. 10 OF FRANKLIN TEMPLETON INVESTORS SERVICES 3-5-02 [17]
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Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The objection is sustained and the claim is allowed as a general unsecured claim. The claim is based on the pre-petition overpayment to the debtor in a securities transaction. Such claims are not entitled to priority status. 11 U.S.C. § 507.

89.	01-28755-A-13L JANIE/ROBERT SIESS MPD #1 WELLS FARGO BANK, N.A., VS.	HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 3-11-02 [44]
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PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied. The debtor has tendered all post-petition payments and is substantially current. There is no cause to terminate the stay. No fees and costs are awarded.

90. 02-21857-A-13L MARIE L. ANAYA HEARING - MOTION
SS #1 TO AVOID LIEN
VS. BENEFICIAL 3-6-02 [10]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The motion is denied without prejudice. The motion is accompanied by no evidence. While evidence was filed with the plan, according to the proof of service, that evidence was not served with the motion. Basically, the motion incorporated into the plan can be used only when the lien avoidance motion will be considered with confirmation of the plan. Otherwise, a "stand-alone" motion, notice of hearing, and declaration (or other admissible evidence) must be filed and served. This is necessary because the notice accompanying the plan (and the motion in the plan) requires the creditor to notice a hearing on any objection. In essence, the creditor is the moving party. The notice with a stand-alone motion requires the creditor to file opposition in accordance with Local Bankruptcy Rule 9014-1. That is, the debtor is the moving party and the creditor is merely filing opposition. By mixing up the two procedures, the notice given to the creditor is confusing.

91. 01-32358-A-13L BRADLEY J. HARRISON HEARING - OBJECTION
EJS #1 TO CLAIM OF HOUSEHOLD
AUTOMOTIVE
2-27-02 [23]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The secured claim is disallowed without prejudice to filing an amended claim for an unsecured deficiency. The debtor surrendered to the movant its collateral before the petition was filed. Therefore, any remaining claim will be limited to any deficiency. The creditor has 30 days from service of the order to file an amended claim.

92. 01-34660-A-13L IAN/MICHELLE GILL HEARING - MOTION FOR
AC #1 RELIEF FROM AUTOMATIC STAY ETC
WELLS FARGO HOME MORTGAGE, INC., VS. 3-1-02 [18]
PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the

movant. The debtor has failed to pay two monthly post-petition installments. This is cause to terminate the automatic stay. The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of \$675 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid by the debtor directly to the movant. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

93. 02-21961-A-13L MIGUEL/ROSA VIVAS HEARING - OBJECTION
LJL #1 TO CONFIRMATION OF PLAN
BY TRUSTEE
3-19-02 [7]

Final Ruling: The debtor has failed to respond to the matter on calendar. Because the debtor has come forward with no opposition or response, this matter is suitable for disposition without oral argument. The objection is sustained. The debtor has failed to use the court's standard chapter 13 plan as required by General Order 01-02, ¶ 2(a). The form used is two generations out of date.

The debtor has 15 days to file an amended plan on the required form and a motion to confirm it. Once filed, the debtor has 30 days to obtain confirmation. If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

94. 01-31862-A-13L DEBRA ANN BAIR HEARING - MOTION
PL #1 TO CONFIRM DEBTOR'S
FIRST AMENDED PLAN
3-7-02 [24]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

95. 02-21062-A-13L LINDA D. HILL HEARING - OBJECTION
JDC #2 TO PROPOSED CHAPTER 13 PLAN
BY SAFE CREDIT UNION
2-20-02 [6]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The objection is overruled as moot. The debtor has amended the plan since the objection was filed. The amended plan provides for the creditor's secured claim in Class 4. This means that the plan does not modify the claim and the debtor will make direct payments to the creditor. The court notes that the amended plan understates the monthly payment. However, the contract, not the plan, will determine the amount of the installment.

96. 00-25663-A-13L GARY/WALINDA HEARING - MOTION FOR
CD #11 WASHINGTON RELIEF FROM AUTOMATIC STAY ETC
HOUSEHOLD FINANCIAL CORP. OF CAL., VS. 3-13-02 [43]

PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(1). The debtor has failed to pay approximately three post-petition installments. The debtor does not deny that this post-petition default has occurred. Instead, the debtor agrees to pay this default within a short period. The debtor has demonstrated to the satisfaction of the court that this cure is likely to be paid. If the debtor has not paid all post-petition arrears, including the April installment, by April 16, the stay will be terminated on the ex parte application of the movant (if supported by a sufficient declaration establishing a default of the order). Upon service of the order on the debtor, debtor's counsel, and the trustee, the movant is authorized to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

97.	02-21666-A-13L	NATHAN/ELIZABETH	HEARING - MOTION FOR
	SW #1	DEWITT	RELIEF FROM AUTOMATIC STAY
	GENERAL MOTORS ACCEPTANCE CORP., VS.		3-11-02 [12]
			PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess its collateral/leased vehicle, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded. The plan requires direct payments to the movant. The debtor has defaulted in making one of these payments as required by the plan. This is cause to terminate the stay. The court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral/leased vehicle is being used by the debtor without compensation and is depreciating in value.

98.	98-26866-A-13L	DENNIS/JUDI NASH	HEARING - MOTION
	AMH #3		TO COMPEL ISSUANCE
			OF DISCHARGE
			2-28-02 [43]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied. The court will issue the discharge when it has approved the final report and account. See In re Avery, 272 B.R. 718 (Bankr. E.D. Cal. 2002). If extraordinary circumstances require it, the court will issue a discharge in advance of the approval of the final report and account. This motion presents no such circumstances.

99.	01-32767-A-13L	ADDISON/CONNIE JONES	HEARING - SECOND
	RD #1		MOTION TO CONFIRM FIRST

April 2, 2002, at 9:00 a.m.

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

100. 01-32867-A-13L GABRIELA RODRIGUEZ HEARING - DEBTOR'S
DPC #1 MOTION FOR PERMISSION TO
USE CASH COLLATERAL
2-27-02 [17]

Final Ruling: The creditors have failed to respond to the matter on calendar. Because the creditors have come forward with no opposition, this matter is suitable for disposition without oral argument. The motion is granted. The debtor may use rents on a month by month basis on condition that she first pays the direct monthly installment to each creditor whose cash collateral is being used as well as each monthly plan payment. If these payments are made, the interest of each creditor in its cash collateral will be adequately protected.

101. 02-21968-A-13L VICKIE JOHNSON HEARING - OBJECTION
LJL #1 TO CONFIRMATION OF PLAN
BY TRUSTEE
3-14-02 [9]

Final Ruling: The debtor has failed to respond to the matter on calendar. Because the debtor has come forward with no opposition or response, this matter is suitable for disposition without oral argument. The objection is sustained. The debtor has failed to use the court's standard chapter 13 plan as required by General Order 01-02, ¶ 2(a).

The debtor has 15 days to file an amended plan on the required form and a motion to confirm it. Once filed, the debtor has 30 days to obtain confirmation. If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

102. 01-32970-A-13L VINCENT C. JOHNSON HEARING - MOTION FOR
DMM #1 RELIEF FROM AUTOMATIC STAY
BANK OF THE WEST, VS. 3-12-02 [16]
PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1).

The proposed plan provides for the surrender of the movant's collateral, a recreational boat. The debtor is not servicing the debt and given the proposed surrender, the plan will make no provision for the payment of the claim once it is confirmed. This is cause to terminate the stay. Because the movant has not established that the value of its collateral exceeds the amount of its claim,

the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived.

103.	02-21470-A-13L	GEORGE E. THRELKEL	HEARING - MOTION FOR
	MET #1		RELIEF FROM AUTOMATIC STAY ETC
	WESTAMERICA BANK, VS.		3-13-02 [11]
			PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1).

The proposed plan provides for the surrender of the movant's real property collateral. The debtor is not servicing the debt and given the proposed surrender, the plan will make no provision for the payment of the claim once it is confirmed. This is cause to terminate the stay. The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of \$675 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived.

104.	00-30971-A-13L	BARRY/YELENA TAYLOR	HEARING - SECOND
	SAC #5		INTERIM APPLICATION FOR
			ATTORNEYS' FEES OF
			SCOTT A. COBEN & ASSOCIATES
			(\$1,391.62)
			3-7-02 [38]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. The compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

105. 00-30971-A-13L BARRY/YELENA TAYLOR HEARING - MOTION
SAC #6 TO MODIFY PLAN AFTER
CONFIRMATION
3-6-02 [35]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

106. 01-22371-A-13L JON/KATHLEEN KATIS CONT. HEARING - OBJECTION
TO PROPOSED CHAPTER 13 PLAN
BY FIRST FRANKLIN FINANCIAL
CORPORATION
2-25-02 [81]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The objection is overruled. The court previously terminated the automatic stay in favor of the objecting creditor. This does not mean that the debtor cannot propose a plan to cure the arrearage owed on the creditor's secured claim. However, because the stay has been terminated, the debtor will be unable to compel the creditor to accept payment rather than foreclose.

107. 01-22371-A-13L JON/KATHLEEN KATIS HEARING - DEBTORS'
RDS #1 APPLICATION TO REINSTATE
THE AUTOMATIC STAY
3-6-02 [84]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied. The court terminated the automatic stay several months ago while the case was proceeding under chapter 7. The debtor later converted the case to chapter 13. This conversion did not have the effect of reimposing the automatic stay. See In re Ramirez, 188 B.R. 413 (B.A.P. 9th Cir. 1995). Further, there is no provision for "reimposing" automatic stay once it has been terminated. The debtor's recourse is to seek injunctive relief in an adversary proceeding or to file a motion pursuant to Fed.R.Bankr.P. 9023 or 9024. See In re Ramirez, 188 B.R. at 416 (concurring opinion) (holding: "In order to have a vacated stay 'reimposed', one must ordinarily file an adversary proceeding seeking an injunction under 11 U.S.C. § 105. Fed.R.Bankr.P. 7001(7) and 7065; Wedgewood Inv. Fund, Ltd. v. Wedgewood Realty Group, Ltd. (In re Wedgewood Realty Group, Ltd.), 878 F.2d 693, 701 (3d Cir.1989); Lawrence P. King, et al., 2 Collier on Bankruptcy ¶¶ 105.02[2] & 105.03 (15th ed. 1995). Occasionally, it might suffice to revive the stay by way of motion for reconsideration under Federal Rules of Civil Procedure 59(e) or 60(b). . . ."). No such adversary proceeding has been filed and the time for a motion under Rule 59(e) has long since expired. The debtor has also not proceeded under Rule 60(b) and has not shown any basis for relief under that rule.

108. 01-23671-A-13L ROBERT/YVONNE KNAGGS HEARING - APPLICATION RE:
CWP #1 ADDITIONAL FEES AND EXPENSES
IN CHAPTER 13 CASE
(\$1,525.50 FEES)
2-25-02 [21]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted in part. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. However, the rate charged exceeds the rate stated in the plan. Without explanation, it has been increased to by \$15.00 an hour. Compensation is allowed at the rate specified in the plan. The compensation is to be paid through the plan in a manner consistent with the plan and the Chapter 13 Fee Guidelines, if applicable.

109. 97-39674-A-13L CARREY JEAN REDDICK HEARING - MOTION
VLC #3 TO MODIFY CONFIRMED
CHAPTER 13 PLAN
3-11-02 [23]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

110. 01-30575-A-13L JACQUELINE WITHERSPOON HEARING - MOTION FOR
RDW #1 RELIEF FROM AUTOMATIC STAY ETC
OLYMPUS SERVICING, VS. 3-12-02 [29]
PART II

Final Ruling: The court continues the hearing to April 16, 2002, at 9:00 a.m. so that it may consider the motion with the debtor's motion to modify her plan. The modified plan proposes to cure the default alleged in the motion as permitted by 11 U.S.C. § 1322(b)(3). See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995); Green Tree Acceptance v. Hoggie (In re Hoggie), 12 F.3d 1008, 1010-11 (11th Cir. 1994); Mendoza v. Temple Inland Mortgage (In re Mendoza), 111 F.3d 1264, 1268 (5th Cir. 1997).

111. 01-29679-A-13L STEPHAN/LEAH HERTEL HEARING - MOTION
TO CONFIRM CHAPTER 13 PLAN
3-18-02 [63]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

112. 01-28080-A-13L JOHN/CHARLEEN STROCK HEARING - MOTION FOR
AJH #1 RELIEF FROM AUTOMATIC STAY ETC
COUNTRYWIDE HOME LOANS, INC., VS. 3-7-02 [35]
PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay two monthly post-petition installments. This is cause to terminate the automatic stay. The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of \$675 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

113. 01-33880-A-13L RAYMOND/ANGELA HEARING - MOTION FOR
JDC #1 LANINGHAM RELIEF FROM AUTOMATIC STAY
THE GOLDEN 1 CREDIT UNION, VS. 2-25-02 [26]
PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded. The subject property has a value of \$14,217.50 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of \$14,541.14. There is no equity and there is no evidence that the property is necessary to a reorganization. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

114. 01-27182-A-13L YSIDERO L. LUCERO HEARING - MOTION
DRF #1 TO CONFIRM AMENDED PLAN
3-1-02 [11]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is denied and the objection is sustained. The plan is not feasible as witnessed by the failure

115. 02-21382-A-13L ROSA L. ROGERS HEARING - MOTION TO
SS #1 AVOID LIEN
VS. WELLS FARGO BANK 3-6-02 [7]

116. 02-21382-A-13L ROSA L. ROGERS HEARING - MOTION TO
SS #2 AVOID LIEN
VS. WELLS FARGO BANK 3-6-02 [10]

April 2, 2002, at 9:00 a.m.
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117. 02-21382-A-13L ROSA L. ROGERS HEARING - MOTION TO
SS #3 AVOID LIEN
VS. SYLVIA TENNIS 3-6-02 [13]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The motion is denied without prejudice. The motion is accompanied by no evidence. While evidence was filed with the plan, according to the proof of service, that evidence was not served with the motion. Basically, the motion incorporated into the plan can be used only when the lien avoidance motion will be considered with confirmation of the plan. Otherwise, a "stand alone" motion, notice of hearing, and declaration (or other admissible evidence) must be filed and served. This is necessary because the notice accompanying the plan (and the motion in the plan) requires the creditor to notice a hearing on any objection. In essence, the creditor is the moving party. The notice with a stand-alone motion requires the creditor to file opposition in accordance with Local Bankruptcy Rule 9014-1. That is, the debtor is the moving party and the creditor is merely filing opposition. By mixing up the two procedures, the notice given to the creditor is confusing.

118. 02-21382-A-13L ROSA L. ROGERS HEARING - MOTION TO
SS #4 AVOID LIEN
VS. PAUL GOYETTO 3-6-02 [16]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because the creditor has come forward with no opposition, this matter is suitable for disposition without oral argument. The motion is denied without prejudice. The motion is accompanied by no evidence. While evidence was filed with the plan, according to the proof of service, that evidence was not served with the motion. Basically, the motion incorporated into the plan can be used only when the lien avoidance motion will be considered with confirmation of the plan. Otherwise, a "stand alone" motion, notice of hearing, and declaration (or other admissible evidence) must be filed and served. This is necessary because the notice accompanying the plan (and the motion in the plan) requires the creditor to notice a hearing on any objection. In essence, the creditor is the moving party. The notice with a stand-alone motion requires the creditor to file opposition in accordance with Local Bankruptcy Rule 9014-1. That is, the debtor is the moving party and the creditor is merely filing opposition. By mixing up the two procedures, the notice given to the creditor is confusing.

119. 99-21582-A-13L DANIEL/DANIELLE MOODY HEARING - MOTION FOR
AC #3 RELIEF FROM AUTOMATIC STAY ETC
WASHINGTON MUTUAL BANK, VS. 2-27-02 [72]
PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. Movant seeks relief from stay with respect to Debtors' real property, located at 705 Norwich Court in Sacramento, California. Movant is secured by a deed of trust encumbering the property. The plan, which identifies Movant as Bank United of Texas, requires that the post-petition note installments be paid directly to Movant. Allegedly, Debtors have not made approximately seven (7) post-petition payments (August 2001 through February 2002) to Movant, for a total of \$5,646.62. Debtors oppose, contending that they have cured the delinquency.

Debtors have provided the court with satisfactory evidence that they have cured or substantially cured the post-petition delinquency. Accordingly, the motion is denied without prejudice. Because Movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

120. 01-34885-A-13L MICHAEL MCMICKLE
LJB #1
WELLS FARGO HOME MORTGAGE, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY ETC
3-8-02 [19]
PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay three monthly post-petition installments. This is cause to terminate the automatic stay. The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of \$675 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

121. 98-22186-A-13L ROBERT L. TAYLOR, SR.
ASW #1
CITIFINANCIAL SERVICES, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-11-02 [80]
PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. Movant seeks relief from stay with respect to Debtor's real property, located at 443 Sage Court in Benecia, California. Movant is secured by a deed of trust encumbering the property. Debtor's second and last amended plan after confirmation, which identifies Movant as "Commercial Credit Corp.(Sec. Pac)," requires that the post-petition note installments be paid directly to Movant. Allegedly, Debtor has not made approximately five and one-half (5½) post-petition payments to Movant, for a total of \$2,073.75. Debtor opposes, contending that he will seek approval to refinance the property and pay Movant's claim in full. Debtor estimates that the payment of Movant's claim will occur within 45 days after the approval of the motion to refinance. The motion to refinance is scheduled for hearing on May 7, 2002.

Debtor's second and last amended plan after confirmation provides that Debtor will refinance or sell the subject property by December 31, 2001. Debtor has neither refinanced, nor sold the property. As a result, Movant is not receiving payments promised by Debtor's plan, nor is it receiving adequate protection payments. Therefore, Debtor is in breach of the Chapter 13 plan. Such failure to comply with the terms of the plan is cause for the granting of

relief from stay. The debtor has had enough time to refinance the property. The court will give no more time given the failure of the debtor to modify the plan to request additional time. Accordingly, the motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d). Because the loan documentation provided by Movant contains no attorney's fees provision, the court awards no fees and costs.

122. 98-34386-A-13L LAZAR/LYUBOV RUSU-CARP HEARING - MOTION
ALC #5 TO MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
2-27-02 [71]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

123. 00-33688-A-13L CHERRI Y. HAYWOOD- HEARING - MOTION
DAS #1 SMITH TO CONFIRM MODIFIED
CHAPTER 13 PLAN
3-5-02 [32]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

124. 99-20288-A-13L FRED/JEARLEAN NASH HEARING - MOTION FOR
AC #1 RELIEF FROM AUTOMATIC STAY
CROSSLAND CAPITAL CORP., VS. 3-18-02 [70]
PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan, which apparently identifies the movant as Mellon Mortgage, requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay 15 monthly post-petition installments. This is cause to terminate the automatic stay. The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of \$675 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period

specified in Cal. Civ. Code § 2924g(d).

125.	01-24490-A-13L	DIANNE M. PENDARVIS	HEARING - MOTION
	RD #1		TO MODIFY CHAPTER 13 PLAN
			AFTER CONFIRMATION
			3-1-02 [22]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. The trustee's objection has been voluntarily dismissed and there are no other objections to confirmation of the modified plan. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

126.	01-24490-A-13L	DIANNA M. PENDARVIS	CONT. HEARING - MOTION FOR
	TJP #1		RELIEF FROM AUTOMATIC STAY
	TRIAD FINANCIAL CORPORATION, VS.		2-27-02 [14]
			PART II

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. Movant seeks relief from stay with respect to Debtor's 1998 Ford Taurus vehicle. Debtor's first amended plan schedules Movant's claim as a class 2 secured claim, payable through the plan. Movant seeks relief from stay on the basis that Debtor is delinquent under her plan payments in the amount of \$1,332. Debtor opposes, arguing that she has filed a modified plan which cures her plan payment delinquency.

On March 1, 2002, Debtor filed an amended plan and a motion to modify plan payments. The motion to modify is set for hearing on the same calendar as this motion. The modification motion has been granted. The movant did not object to confirmation. The amended plan cures Debtor's delinquency by extending the plan payments. Given the cure of default under the terms the original plan, there is no cause to terminate the stay.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

127.	01-34890-A-13L	CORSENO/CONCHITA	HEARING - OBJECTION
	NLE #1	DALANGIN	TO CONFIRMATION OF PLAN
			BY TRUSTEE
			2-28-02 [8]

Final Ruling: The debtor has failed to respond to the matter on calendar. Because the debtor has come forward with no opposition or response, this matter is suitable for disposition without oral argument. The objection is sustained. This is the fourth petition filed by the debtor. Each of the prior petitions was dismissed because the debtor defaulted in making plan payments. Given that the debtor has been employed in the same job throughout these cases, and given the debtor's net income has not changed since the most recent case, the court has no basis for concluding that this case is likely to be more successful. The debtor has not met the burden of showing that the plan is feasible. 11 U.S.C. § 1325(a)(6).

The debtor also has the burden of showing that the debtor's financial circumstances have changed such that the court can conclude that this petition is likely to be more successful than the last. In re Metz, 820 F.2d 1495, 1497

(9th Cir. 1987). See also Fed.R.Bankr.P. 3015(f). The debtor has produced no such evidence. What problems prompted the material default in and dismissal of the prior cases? Have those problems been cured? There are no answers to these questions. In the absence of answers, the plan has been proposed in bad faith. 11 U.S.C. § 1325(a)(3).

128.	01-29891-A-13L	GARY/CHERYL BLAINE	HEARING - MOTION FOR
	SW #1		RELIEF FROM AUTOMATIC STAY
	GMAC, VS.		3-12-02 [33]
			PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded.

The case has been pending since August 2001 but the debtor has been unable to confirm a plan. Since the proposed plan provides for the movant's claim in Class 2, the claim will be paid only if a plan is confirmed. Confirmation is unlikely given that the debtor has failed to make over \$2,000.00 in plan payments. This is cause to terminate the stay.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Fees and costs of \$675 or, if less, the amount actually payable by the movant to its counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor personally. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

129.	01-31393-A-13L	DELFINO/BARBARA	HEARING - MOTION TO
	RD #1	LANDEROS	MODIFY CHAPTER 13 PLAN
			AND CONFIRMATION
			3-1-02 [28]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

130. 98-25094-A-13L
DRF #3

MIKAEL G. JOHNSON

HEARING - MOTION
TO MODIFY PLAN
3-5-02 [55]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument. The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329. The trustee's objection is overruled. A modified plan was filed on March 18, 2002. Its terms were adequately summarized in the motion.

131. 00-26695-A-13L LEWIS/ROSALIN PUGH
RMS #1
SEA WEST COAST GUARD FED. C.U. VS.,

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY ETC
3-1-02 [59]
PART II

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is denied as moot. A plan was confirmed in this case on August 25, 2000. That plan provides for the surrender of the movant's collateral. It also provides:

"If the Debtor proposes to surrender collateral to a secured creditor, the Debtor shall promptly accomplish the surrender unless the creditor refuses to accept the property. As to personal property, this means that the Debtor shall surrender the property not later than 5 days after entry of the order of confirmation . . . Entry of the confirmation order shall constitute an order modifying the automatic stay of 11 U.S.C. § 362 to allow any secured creditor whose collateral is being surrendered to receive or foreclose upon that collateral and to exercise its rights and remedies against its collateral."

Thus, the stay has already been terminated and the motion is moot. To the extent the plan's description of the surrendered collateral is not as comprehensive as in the creditor's security documentation, the order may recite that the collateral identified in the motion has been surrendered and the stay previously terminated.